Supreme Court, U.S.
FILED
JAN 8 1998

No. 97-1141

In the Supreme Court of the United States

OCTOBER TERM, 1997

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY, ET AL., CROSS-PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION AND THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether the Federal Communications Commission reasonably construed 47 U.S.C. 251(c)(3), which entitles "any requesting telecommunications carrier" to obtain access to unbundled elements of the incumbent carrier's network, to permit requesting carriers to obtain access to such elements as a means of providing telecommunications services whether or not they have constructed some facilities of their own.

2. Whether the Commission reasonably determined that 47 U.S.C. 251(c)(3) and related provisions of the Telecommunications Act of 1996 require incumbent carriers to provide new entrants with nondiscriminatory access to (a) operational support systems, (b) operator services, and (c) "vertical switching functions" such as caller identification and call forwarding.

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OPINION BELOW

The principal opinion of the court of appeals (Pet. App. 1a-67a), as amended by the court's order on rehearing (*id.* at 68a-72a), is reported at 120 F.3d 753. The First Report and Order of the Federal Communications Commission (FCC) is reported at 11 FCC Rcd. 15,499 (1996).

JURISDICTION

The principal judgment of the court of appeals was entered on July 18, 1997. A subsequent order, granting rehearing in part and denying rehearing in part, was issued on October 14, 1997. The present cross-

petition was filed on January 8, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

DISCUSSION

On November 19, 1997, the FCC and the United States filed a petition for certiorari (Fed. Pet.) in *Federal Communications Commission, et al.* v. *Iowa Utilities Board, et al.*, No. 97-831. That petition, along with the petitions of several other parties, seeks review of the court of appeals decision at issue in this conditional cross-petition. Three previous cross-petitions have also been filed, seeking conditional review of the same decision. See *Ameritech Corporation, et al.* v. *Federal Communications Commission, et al.*, No. 97-1075 (filed Dec. 24, 1997) (Regional Bell Cross-Pet.); *GTE Midwest Incorporated* v. *Federal Communications Commission, et al.*, No. 97-1087 (filed Dec. 30, 1997) (GTE Cross-Pet.); *U S WEST, Inc.* v. *Federal Communications Commission, et al.*, No. 97-1099 (filed Jan. 5, 1998) (U S WEST Cross-Pet.).

This most recent cross-petition presents two questions. The first addresses whether the Federal Communications Commission reasonably construed 47 U.S.C. 251(c)(3), which entitles "any requesting telecommunications carrier" to obtain access to unbundled elements of the incumbent carrier's network, to permit requesting carriers to obtain access to such elements whether or not they have constructed some facilities of their own. That question is identical to the first question presented in the previous three cross-petitions. The second question encompasses several other issues, which collectively concern whether Section 251(c)(3) and related provisions of the Telecommunications Act

of 1996 require incumbent carriers to provide new entrants with non-discriminatory access to (a) operational support systems, (b) operator services, and (c) "vertical switching functions" such as caller identification and call forwarding. One or more of those issues appear in each of the previously filed cross-petitions. See GTE Cross-Pet. 21-25 (discussing OSS and operator services); Regional Bell Cross-Pet. 9, 12, 22-24 (discussing vertical switching functions such as caller identification and call forwarding); U S WEST Cross-Pet. 5-6 (incorporating discussion in Regional Bell cross-petition).

On December 31, 1997, January 6, 1998, and January 7, 1988, respectively, we filed responses to the Regional Bell, GTE, and U S WEST cross-petitions, and we here incorporate those responses by reference. For the reasons discussed in those responses, we do not oppose certiorari on the first question presented in this cross-petition if this Court grants review of the second question presented in our petition in No. 97-831. We do oppose certiorari on the second question presented in this cross-petition, also for the same reasons discussed in our earlier responses.

CONCLUSION

We do not oppose the cross-petition with respect to the first question presented if the Court grants review of the second question presented in our petition in No. 97-831. The cross-petition should be denied with respect to its second question presented.

Respectfully submitted.

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JANUARY 1998